

**COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

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FIBER TECHNOLOGIES NETWORKS, L.L.C.,	)	
	)	
Complainant,	)	
	)	
v.	)	D.T.E. 02-47
	)	
VERIZON NEW ENGLAND and	)	
NORTHEAST UTILITIES SERVICE COMPANY,	)	
	)	
Respondents.	)	
<hr/>	)	

**WMECO’S OPPOSITION TO FIBERTECH’S MOTION TO COMPEL  
DISCOVERY RESPONSES AND REQUEST FOR PROCEDURAL SCHEDULE**

The Respondent Western Massachusetts Electric Company (“Respondent” or “WMECO”), through undersigned counsel, hereby files this opposition to Fiber Technologies Networks, L.L.C. (“Complainant” or “Fibertech”) request for an order compelling Respondents to respond to the Discovery Requests that Fibertech has propounded in this action.

On September 9, 2002, WMECO received Fibertech’s First Set of Discovery Requests. On September 18, 2002, WMECO filed a letter with the Department of Telecommunications and Energy (“Department”) indicating that WMECO will not be responding to Fibertech’s discovery requests. As stated in the September 18, 2002 letter (attached hereto as “Exhibit A”), WMECO has a request for dismissal pending in this matter based on the Department’s lack of jurisdiction and the lack of merit to the claims raised by Fibertech in its Complaint. In addition, WMECO indicated that it was under no obligation

to respond to Fibertech's questions. WMECO reiterates in this opposition that it has no obligation to respond to Fibertech's discovery request at this time and, in fact, it would be inappropriate to do so.

Fibertech states in its Motion that WMECO ignores the Department's primary jurisdiction over the issues presented in Fibertech's Complaint. WMECO disputes this notion and reiterates its belief that the Department does not have jurisdiction over this Complaint. As WMECO has stated in its Answer, the Department does not have the authority to abrogate a contract, such as the License Agreement, which has been entered into in good faith by all the parties. WMECO asserts that jurisdiction over a contract matter belongs in the court system and not at the Department. Thus, the litigation currently pending in the Superior Court of Hampden County is the proper forum to resolve any contractual disputes.<sup>1</sup>

In its Motion, Fibertech also cites Department regulations which provide for voluntary compliance with discovery requests before the formal hearing requests. 220 CMR 1.06(6)(C)(3). Thus, Fibertech has moved to compel WMECO to respond to discovery to which WMECO has no obligation to respond in the first instance. Such a request is clearly inappropriate under the regulations and inconsistent with the meaning of the term voluntary. In addition, the purpose of discovery at the Department is to allow parties to prepare for hearings. Because WMECO has moved to dismiss the complaint, it is entirely possible that there will be no hearings in this matter. In this instance, discovery would be a waste of all the parties' time and resources.

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<sup>1</sup> As stated in Exhibit A, the Superior Court judge in Hampton County has already issued a ruling granting WMECO's request for a preliminary injunction and has issued a tracking order setting the deadlines for the various stages of litigation.

Fibertech's discovery requests as well as its Motion to Compel are premature.<sup>2</sup> It is clear that WMECO need not respond and should not respond to Fibertech's discovery requests.

### **Conclusion**

For all of the reasons set forth above, WMECO requests that the Department deny Fibertech's request to compel WMECO to respond to its discovery requests. Furthermore, WMECO reiterates its August 27, 2002 request that the Department dismiss Fibertech's Complaint.

Respectfully submitted,  
WESTERN MASSACHUSETTS ELECTRIC COMPANY

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Dated: October 2, 2002

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<sup>2</sup> In the event Fibertech's discovery responses are properly directed to WMECO in the future, WMECO reserves the right to object to the form and content of the Fibertech questions.

CERTIFICATE OF SERVICE

I hereby certify that on October \_\_\_\_, 2002, I served a copy of the foregoing on the Respondents, by delivering a copy of the same **via email and first class mail** to:

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